

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	21cv9575 (DLC)
	:	
Plaintiff,	:	<u>ORDER</u>
-v-	:	
	:	
JAMES DAVID O'BRIEN,	:	
	:	
Defendant.	:	
-----	X	

DENISE COTE, District Judge:

On April 6, 2023, the defendant submitted an affidavit (the "Affidavit") in connection with his opposition to the plaintiff's March 17 motion for monetary relief. On April 11, the plaintiff submitted a letter seeking to strike paragraphs 1-23 and 27-29 of the Affidavit for violating the defendant's February 3 Consent. On April 17, the defendant submitted a letter in opposition to the plaintiff's motion to strike those paragraphs.

The February 3 Consent provides that

in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing on such a motion . . . Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint . . . [and] for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court except with respect to the quantum of disgorgement, i.e., net profits.

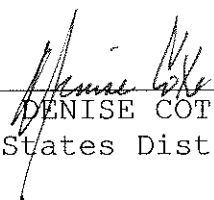
It is the Court's intention to enforce the February 3 Consent. To the extent that any factual statement in the Affidavit does

not contest the truthfulness of the Complaint's allegations and is relevant to disgorgement and the appropriate amount of civil penalties, the Court will consider the statement. Accordingly, it is hereby

ORDERED that the plaintiff's request to strike is denied.

IT IS FURTHER ORDERED that the plaintiff shall advise the Court by April 21 whether it intends to cross examine the defendant. If so, the parties shall appear on April 27 at 10:00 a.m. in Courtroom 18B, 500 Pearl Street, for the defendant's cross examination, followed by any oral argument that the parties wish to present. If the plaintiff does not intend to cross examine the defendant, the Court will hear any oral argument on April 27 at 10:00 a.m. in Courtroom 18B and will decide the amount of disgorgement and penalties on the record currently before it.

Dated: New York, New York
April 18, 2023



DENISE COTE
United States District Judge